NG KIM TIN & ANOR

v.

COLLECTOR OF LAND REVENUE, JERANTUT & ORS

COURT OF APPEAL, PUTRAJAYA
DENIS ONG JCA
ABDUL KADIR SULAIMAN JCA
ARIFIN ZAKARIA JCA
[CIVIL APPEAL NO: C-01-267-1997]
25 MARCH 2005

LAND LAW: *Trespass - Unlawful occupation - Whether plaintiffs had licence to occupy - Whether plaintiffs no longer held a valid temporary occupation licence in respect of State land - Whether plaintiffs remained on land as trespassers - Whether an offence under National Land Code - Whether plaintiffs illegally carried out activities on State land - Whether plaintiffs entitled to possession of land - Whether plaintiffs could institute an action for trespass against defendants - Whether plaintiffs' claim for special damages allowed*

In 1973, the second plaintiff was issued with a Temporary Occupation Licence in respect of a piece of land ('the land') which was renewed yearly until 31 December 1978. On 1 January 1979 onwards, application for its renewal was refused. The plaintiffs however held on to the land without any permit and decided to go into business of making cement drains and culverts. By a letter dated 19 September 1979, the second plaintiff applied to the first defendant for permission to use the land temporarily for that purpose. The first defendant rejected the application and instructed the second plaintiff to destroy the building and the equipments on the land failing which the department would do so. The plaintiffs did not accede to the requirement of the notice given and subsequently, the officers of the first and second defendants moved in and demolished the plaintiffs' building and destroyed their equipments. The plaintiffs filed a suit in the High Court against the defendants and claimed special damages and general exemplary damages for trespass to property. The High Court dismissed the plaintiffs' claim. Hence, the plaintiffs appeal to the Court of Appeal against the decision of the High Court.

Held (dismissing the appeal)
Per Abdul Kadir Sulaiman JCA delivering the judgment of the court:

[1] The High Court Judge was correct when it dismissed the action and held that the plaintiffs were trespassers as they had no Temporary Occupation Licence during the material period in respect of the State land. The plaintiffs were in occupation without lawful authority. Under the National Land Code the plaintiffs had committed an offence and could be ejected if they persisted in remaining therein. (p 617 e)

[2] At the time the officers of the first and second defendants moved in to demolish the building and destroy the equipment on the land, the second plaintiff was no longer the holder of a valid Temporary Occupation Licence. It had expired on 31 December 1978. Therefore, the plaintiffs were carrying out activities on the State land illegally. They were no longer persons entitled to possession of the land, and could not therefore have instituted an action for trespass against the defendants. (p 617 g-h)

*[**Bahasa Malaysia** Translation Of Headnotes*

Pada tahun 1973, plaintif kedua telah diberikan Lesen Pendudukan Sementara sebidang tanah ('tanah') lesen mana telah diperbaharui olehnya sehingga 31 Disember 1978. Bermula 1 Januari 1979 dan seterusnya, permohonan plaintif kedua untuk memperbaharui telah ditolak. Plaintif-plaintif bagaimanapun terus menduduki tanah tanpa permit dan menjalankan perniagaan membuat pembetung dan longkang simen di situ. Melalui surat bertarikh 19 September 1979, plaintif kedua memohon kepada defendan pertama untuk kebenaran sementara menggunakan tanah untuk perniagaan di atas. Defendan pertama telah menolak permohonan dan mengarahkan plaintif kedua memusnahkan bangunan dan peralatan-peralatan sebelum ianya dimusnahkan oleh defendan pertama sendiri. Plaintif-plaintif tidak menghiraukan notis arahan yang diberi dan berikutnya pegawai-pegawai defendan pertama dan kedua memasuki kawasan tanah dan memusnahkan bangunan dan peralatan plaintif-plaintif. Plaintif-plaintif memfail tindakan di Mahkamah Tinggi terhadap defendan-defendan menuntut gantirugi khas dan gantirugi teladan am kerana pencerobohan terhadap hartanah. Mahkamah Tinggi menolak tuntutan plaintif-plaintif dan plaintif-plaintif merayu ke Mahkamah Rayuan.

Diputuskan (menolak rayuan)
Oleh Abdul Kadir Sulaiman HMR menyampaikan penghakiman mahkamah:

[1] Hakim Mahkamah Tinggi betul apabila menolak tindakan dan mendapati bahawa plaintif-plaintif adalah penceroboh kerana mereka tidak mempunyai Lesen Pendudukan Sementara untuk menduduki tanah Kerajaan pada waktu material. Plaintif-plaintif telah menduduki tanah tanpa kebenaran sah. Di bawah Kanun Tanah Negara, plaintif-plaintif telah melakukan kesalahan dan boleh dihalau keluar jika masih terus menduduki tanah.

[2] Sewaktu pegawai-pegawai defendan pertama dan kedua bergerak memasuki tanah untuk memusnahkan bangunan dan peralatan-peralatan di situ, plaintif kedua bukan lagi pemegang Lesen Pendudukan Sementara yang sah. Ia telah luput pada 31 Disember 1978. Oleh itu, plaintif-plaintif telah menjalankan aktiviti-aktiviti atas tanah Kerajaan secara haram. Mereka bukan lagi merupakan orang-orang yang berhak kepada milikan tanah, dan dengan itu tidak boleh memulakan tindakan kerana menceroboh terhadap defendan-defendan.]

Case(s) referred to:
Mohamed Said v. Fatimah [1962] 28 MLJ 328 ***(refd)***
Papoo v. Veeriah [1965] 31 MLJ 127 ***(refd)***

Legislation referred to:
National Land Code, s. 50

For the appellant - Salsuntak Devi Sharma (Ranjit Rai Sharma with her); M/s Sharma & Jaafar
For the respondent - A Rahman Sebli; Pahang State Legal Advisor's Office

Reported by Suhainah Wahiduddin

JUDGMENT

Abdul Kadir Sulaiman JCA:
This is an appeal against the decision of the learned High Court Judge, Kuantan, Pahang given on 17 December 1997 dismissing the claim of the appellants with costs for special damages as a result of their capital equipment fixtures, buildings, raw materials and stock of finished products having been destroyed by officers of the 1st and 2nd respondents, and general and exemplary damages for trespass to property. The appellants are husband and wife respectively. On 12 May 2003 we dismissed the appeal with costs. We now provide our reasons. For convenience, in this judgment, the appellants would be referred to as the plaintiffs and the respondents as the defendants, their respective position in the court below.

Since 1973, the 2nd plaintiff was issued with a Temporary Occupation Licence No. A2/73 meant for agricultural purpose in respect of a piece of land in the district of Pedah, Tempat Jalan Kuala Karau, Jerantut, Pahang which was renewed yearly until 31 December 1978. For period 1 January 1979 onwards an application was made for its renewal but it was refused. So for the year 1979 no Temporary Occupation Licence was issued to the 2nd plaintiff in respect of the said land. Neither was it issued to anyone else. The plaintiffs, however, held on to the land without any permit or licence from the authority from then on. They decided to go into the business of making cement drains and culverts under the registered name of Sungei Wang Trading Company on 25 September 1979. By a letter dated 19 September 1979 the 2nd plaintiff applied to the first defendant for permission to use the land temporarily for the purpose. The 1st defendant by a letter dated 21 September 1979 rejected the application sought and at the same time, asked the 2nd plaintiff to destroy the building and the equipments on the land within a period of two weeks from the date of the letter failing which the department would do so. The plaintiffs did not accede to the requirement of the notice given. Sometimes after 5 October 1979 the plaintiffs started to manufacture cement products on the land. So, on 24 November 1979, the officers of the 1st and 2nd defendants moved in. Hence, the suit against the defendants. The writ of the plaintiffs with the claim endorsed against the defendants was issued on 30 June 1980.

The learned judge having heard the suit, dismissed the action holding that the plaintiffs were trespassers having no Temporary Occupation Licence during the material period in respect of State land. They were in occupation without lawful authority. Under the National Land Code they committed an offence and could be ejected if they persist in remaining therein. On this we agree with the learned judge. A temporary occupation licence is exactly what the name implies. It is a licence to occupy and nothing more. No body has any claim in law to the issue of a temporary occupation licence. See *Papoo v. Veeriah* [1965] 31 MLJ 127.

According to the evidence in the trial it is established that at the time the officers of the 1st and 2nd defendants moved in to demolish the building and destroy the equipment on the land and at the time the plaintiffs sued out the summons, they were, and in particular the 2nd plaintiff in whose name the temporary occupation licence was issued earlier on, was no longer the holder of a valid temporary occupation licence. The licence has expired on 31 December 1978. Therefore, they were on the State land carrying out activities on the land illegally as they were no longer persons entitled to possession of the land, and could not therefore have instituted an action for trespass against the respondent. See *Mohamed Said v. Fatimah* [1962] 28 MLJ 328. On this ground alone, the appeal by the plaintiffs ought to be dismissed.

But learned counsel for the plaintiffs before us, argues that s. 50 of the National Land Code saves the plaintiffs from being a trespasser. The learned counsel refers to exh. "P14" which is a letter from the 2nd plaintiff dated 19 September 1979 requesting the 1st defendant to vary the condition of land use of the land from agriculture to industry so as to legalise the activities to be carried out by the plaintiffs on the land in question. But the defendants had failed to exercise the powers given to them to vary the conditions of land use which was currently attached to the temporary occupation licence. This argument lacks any merit and we are of the view that s. 50 thereof has no application to the facts of the case before us. As was pointed out earlier, since 31 January 1979, the plaintiffs have been occupying this land illegally because the temporary occupation licence issued to the 2nd plaintiff had expired and ceased to exist beyond 31 December 1978.

Without having a licence to occupy, the plaintiffs remained on the land as a trespasser. There is therefore nothing to vary as to the conditions of land use because as of that date the land belongs to the State and no longer in legal occupation of the plaintiffs. His argument is based on the premise that as a matter of practice an occupier is allowed to hold on to the land even though his application for extension of the temporary occupation licence has not formally been approved. No doubt the plaintiffs say that application for a temporary occupation was applied for the year 1979 but it was never issued at all. The application for such licence was formally turned down on 1 October 1979. In our view, whatever is the practice and expectation, the fact remained as stated by Adam J in *Mohamed Said v. Fatimah (supra)* at p. 330:

> … in my view a Temporary Occupation Licence gives the holder thereof exclusive possession of the land the subject matter of the licence during the period for which the licence is expressed to be valid, that is to say from the date of issue to 31 December of the year of issue. If the licence is renewed, the period for which the renewed licence gives exclusive possession to the licensee must, since a monetary payment is a condition precedent to the grant of any licence or renewal thereof, commence at the date when the payment is made. This is borne out by the receipt itself. The only date on it is 5 July 1962. That clearly indicates the date of the commencement of the renewal period.
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> The fact that the Land Office makes a licensee, whose licence has expired, pay the same amount as he would have to pay if he renewed the licence on the day that it did expire, that is to say on 31 December, is in my opinion immaterial. It does not mean that the Collector by accepting the payment is doing any more than indicate that he does not propose in all probability to proceed against the person making the payment for unauthorised occupation of State land.

In the circumstances, having considered the reasoning given by the learned judge for dismissing the claim of the plaintiffs we cannot see in what way the learned judge has erred in coming to the decision. We accordingly dismissed this appeal with costs. We made the usual order that the deposit be credited to the account of taxed costs.